

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 600

**Introduced by Senators Padilla and Steinberg
(Coauthors: Senators DeSaulnier, Oropeza, and Romero)**

February 27, 2009

An act to amend Sections 30104, 30108, and 30181 of, and to add Article 4 (commencing with Section 30135) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 600, as amended, Padilla. Cigarette and tobacco products taxes: Tobacco Tax and Health Protection Fund.

The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10). A provision of that law imposes a tax upon the distribution of tobacco products at a tax rate which is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.

This bill would, commencing on or after the first day of the first calendar quarter commencing more than 90 days on or after the effective date of the bill, impose an additional tax on the distribution of cigarettes at the rate ~~of (\$0.075)~~ of (\$0.075) or 75 mills for each cigarette distributed, and would require a dealer or wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in his or her possession or under his or her control on that date, as

specified. Because the bill would impose an additional tax on cigarettes under the Cigarette and Tobacco Products Tax Law, it would increase the tax upon the distribution of tobacco products under that law. The bill would provide that the revenues collected from the additional tax would be allocated, upon appropriation by the Legislature, for certain purposes. The bill would require funds to be transferred from the fund to the California Children and Families First Trust Fund, which is a continuously appropriated fund, the Hospital Services Account, the Physician Services Account, the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund, *the Public Resources Account*, and the Breast Cancer Fund, as necessary to offset revenue decreases to those accounts directly resulting from imposition of additional taxes by these provisions. Because this bill would require funds to be transferred to a continuously appropriated fund, it would make an appropriation.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Because this bill would impose new requirements under the Cigarette and Tobacco Products *Tax* Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Tobacco use and tobacco-related diseases place a tremendous
- 4 financial burden upon the persons with the disease, their families,
- 5 the health care delivery system, local and state governments, and
- 6 society as a whole.

1 (b) Smoking related diseases have a major negative economic
2 impact on all taxpayers and the entire health care system, which
3 justifies the use of tobacco taxes to fund prevention, early detection,
4 treatment, and research of major diseases.

5 (c) Tobacco use costs Californians more than \$8.6 billion in
6 medical expenses every year. The cost of lost productivity due to
7 tobacco use adds an additional estimated \$7.2 billion to the annual
8 economic consequences of smoking in California.

9 (d) Smoking is the single most preventable cause of death and
10 disease in California. Fully one in five deaths in California is
11 attributable to smoking: more than 40,000 every year.

12 (e) Tobacco use is a major contributor to all the leading causes
13 of death in California, including heart disease and stroke, cancer,
14 diabetes, and lung disease.

15 (f) Smoking can have an adverse health effect on all Californians
16 because secondhand smoke has been proven to be a leading cause
17 of disability, disease, and death in California. Secondhand smoke
18 is causally associated with lung disease, heart disease, cancer, and
19 obesity.

20 (g) Increasing the cost of cigarettes and other tobacco products
21 has proven to be one of the most effective ways to reduce smoking,
22 especially among youth.

23 (h) Funding for California's pioneering tobacco prevention and
24 control program has dropped to the point where it is now far below
25 what is recommended by federal public health agencies.

26 (i) Tobacco companies spend approximately 10 times more to
27 promote tobacco use than the state spends to prevent it and to help
28 tobacco users quit.

29 (j) California currently ranks ~~30th~~ 32nd among the states in the
30 level of cigarette taxes. If this measure were approved, four states
31 would still have higher cigarette taxes than California.

32 (k) Forty-four states have raised their tobacco taxes since
33 California last raised its tax.

34 (l) Providing new funding for enforcement of tobacco laws will
35 reduce cigarette smuggling, the sale of black market cigarettes,
36 and illegal sales of tobacco products to minors.

37 (m) Increasing tobacco taxes and directing a portion of the
38 revenues for smoking cessation programs will assist smokers to
39 quit smoking, especially persons of low socioeconomic status who
40 comprise the largest number of current smokers.

1 *SEC. 2. Section 30104 of the Revenue and Taxation Code is*
2 *amended to read:*

3 30104. The taxes imposed by this part shall not apply to the
4 sale of cigarettes or tobacco products by a distributor to a common
5 carrier engaged in interstate or foreign passenger service or to a
6 person authorized to sell cigarettes or tobacco products on the
7 facilities of the carrier. Whenever cigarettes or tobacco products
8 are sold by distributors to common carriers engaged in interstate
9 or foreign passenger service for use or sale on facilities of the
10 carriers, or to persons authorized to sell cigarettes or tobacco
11 products on those facilities, the tax imposed by ~~Sections 30101,~~
12 ~~30123, and 30131.2~~ *under this part* shall not be levied with respect
13 to the sales of the cigarettes or tobacco products by the distributors,
14 but a tax is hereby levied upon the carriers or upon the persons
15 authorized to sell cigarettes or tobacco products on the facilities
16 of the carriers, as the case may be, for the privilege of making sales
17 in California at the same rate as set forth in ~~Sections 30101, 30123,~~
18 ~~and 30131.2~~ *under this part*. Those common carriers and authorized
19 persons shall pay the tax imposed by this section and file reports
20 with the board, as provided in Section 30186.

21 *SEC. 3. Section 30108 of the Revenue and Taxation Code is*
22 *amended to read:*

23 30108. (a) Every distributor engaged in business in this state
24 and selling or accepting orders for cigarettes or tobacco products
25 with respect to the sale of which the tax imposed by ~~Sections~~
26 ~~30101, 30123, and 30131.2~~ *under this part* is inapplicable shall,
27 at the time of making the sale or accepting the order or, if the
28 purchaser is not then obligated to pay the tax with respect to his
29 or her distribution of the cigarettes or tobacco products, at the time
30 the purchaser becomes so obligated, collect the tax from the
31 purchaser, if the purchaser is other than a licensed distributor, and
32 shall give to the purchaser a receipt therefor in the manner and
33 form prescribed by the board.

34 (b) Every person engaged in business in this state and making
35 gifts of untaxed cigarettes or tobacco products as samples with
36 respect to which the tax imposed by ~~Sections 30101, 30123, and~~
37 ~~30131.2~~ *under this part* is inapplicable shall, at the time of making
38 the gift or, if the donee is not then obligated to pay the tax with
39 respect to his or her distribution of the cigarettes or tobacco
40 products, at the time the donee becomes so obligated, collect the

1 tax from the donee, if the donee is other than a licensed distributor,
2 and shall give the donee a receipt therefor in the manner and form
3 prescribed by the board. This section shall not apply to those
4 distributions of cigarettes or tobacco products which are exempt
5 from tax under Section 30105.5.

6 (c) “Engaged in business in the state” means and includes any
7 of the following:

8 (1) Maintaining, occupying, or using, permanently or
9 temporarily, directly or indirectly, or through a subsidiary, or agent,
10 by whatever name called, an office, place of distribution, sales or
11 sample room or place, warehouse or storage place, or other place
12 of business.

13 (2) Having any representative, agent, salesperson, canvasser or
14 solicitor operating in this state under the authority of the distributor
15 or its subsidiary for the purpose of selling, delivering, or the taking
16 of orders for cigarettes or tobacco products.

17 (d) The taxes required to be collected by this section constitute
18 debts owed by the distributor, or other person required to collect
19 the taxes, to the state.

20 ~~SEC. 2:~~

21 *SEC. 4.* Article 4 (commencing with Section 30135) is added
22 to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation
23 Code, to read:

24
25 Article 4. Tobacco Tax and Health Protection Fund

26
27 30135. Notwithstanding any other provision of law, the
28 Tobacco Tax and Health Protection Fund is hereby created in the
29 State Treasury for the ~~exclusive purpose of funding the tobacco~~
30 ~~control provisions of the Tobacco Tax and Health Protection Act~~
31 ~~of 2009; purposes set forth in this article.~~

32 ~~30135.1. The revenue from the taxes imposed pursuant to this~~
33 ~~article shall be deposited as follows:~~

34 ~~(a)–~~

35 *30135.1. (a) Except for payments of refunds made pursuant*
36 *to Article 1 (commencing with Section 30361) of Chapter 6, and*
37 *reimbursement of the State Board of Equalization for expenses*
38 *incurred in the administration and collection of the tax imposed*
39 *by this article, all revenues raised pursuant to the tax imposed by*

1 *this article shall be deposited in the Tobacco Tax and Health*
2 *Protection Fund.*

3 *(b) Money in the Tobacco Tax and Health Protection Fund,*
4 *except for money necessary for the purposes set forth in Section*
5 *30135.6, shall be transferred as follows:*

6 *(1) Fifteen percent in the Tobacco Control and Lung Cancer*
7 *Research Account, which is hereby created in the Tobacco Tax*
8 *and Health Protection Fund.*

9 ~~*(b)*~~

10 *(2) Eighty-five percent in the Tobacco Tax General Fund*
11 *Account, which is hereby created in the General Fund.*

12 30135.2. For the purposes of this article:

13 (a) “Cigarette” has the same meaning as that in Section 30003,
14 as it read on January 1, 2009.

15 (b) “Tobacco products” includes, but is not limited to, all forms
16 of cigars, smoking tobacco, chewing tobacco, snuff, and any other
17 articles or products made of, or containing at least 50 percent,
18 tobacco, but does not include cigarettes.

19 30135.3. In addition to any other taxes imposed upon the
20 distribution of cigarettes, there shall be imposed an additional tax
21 upon every distributor of cigarettes at the rate of seventy-five mills
22 (\$0.075) for each cigarette distributed on or after the first calendar
23 quarter commencing more than 90 days after the effective date of
24 this section.

25 30135.4. ~~*(a) (1) Every dealer—or and wholesaler, for the*~~
26 ~~*privilege of holding or storing cigarettes—or tobacco products for*~~
27 ~~*sale, use, or consumption, shall pay a floor stock tax for each*~~
28 ~~*cigarette—or tobacco product in his or her possession or under his*~~
29 ~~*or her control in this state at 12:01 a.m. on the first day of the first*~~
30 ~~*calendar quarter commencing more than 90 days after the effective*~~
31 ~~*date of this section at the rate of seventy-five mills (\$0.075) for*~~
32 ~~*each cigarette or the equivalent rate of tax for each cigarette or the*~~
33 ~~*equivalent rate of tax for each tobacco product, as determined by*~~
34 ~~*the State Board of Equalization: cigarette.*~~

35 *(2) Every dealer and wholesaler shall file a return with the State*
36 *Board of Equalization on or before the first day of the first calendar*
37 *quarter commencing more than 180 days after the effective date*
38 *of Section 30135.3 on a form prescribed by the board, showing*
39 *the number of cigarettes in his or her possession or under his or*
40 *her control at 12:01 a.m. on the first day of the first calendar*

1 *quarter commencing more than 90 days after the effective date of*
2 *Section 30135.3. The amount of tax shall be computed and shown*
3 *on the return.*

4 *(b) (1) Every licensed cigarette distributor, for the privilege of*
5 *distributing cigarettes and for holding or storing cigarettes for*
6 *sale, use, or consumption, shall pay a cigarette indicia adjustment*
7 *tax for each California cigarette tax stamp that is affixed to any*
8 *package of cigarettes and for each unaffixed California cigarette*
9 *tax stamp in his or her possession or under his or her control at*
10 *12:01 a.m. on the first day of the first calendar quarter*
11 *commencing more than 90 days after the effective date of Section*
12 *30135.3 at the following rates:*

13 *(A) One dollar and eighty-seven and one-half cents (\$1.875)*
14 *for each stamp bearing the designation "25."*

15 *(B) One dollar and fifty cents (\$1.50) for each stamp bearing*
16 *the designation "20."*

17 *(C) Seventy-five cents (\$0.75) for each stamp bearing the*
18 *designation "10."*

19 *(2) Every licensed cigarette distributor shall file a return with*
20 *the board on or before the first day of the first calendar quarter*
21 *commencing 180 days after the effective date of Section 30135.3*
22 *on a form prescribed by the board, showing the number of stamps*
23 *described in subparagraphs (A), (B), and (C), of paragraph (1).*
24 *The amount of tax shall be computed and shown on the return.*

25 *(c) The taxes required to be paid by this section are due and*
26 *payable on or before the first day of the first calendar quarter*
27 *commencing 180 days after the effective date of Section 30135.3.*
28 *Payments shall be made by remittances payable to the board and*
29 *the payments shall accompany the forms required to be filed by*
30 *this section.*

31 *(d) Any amount required to be paid by this section that is not*
32 *timely paid shall bear interest at the rate and by the method*
33 *established pursuant to Section 30202 from the first day of the*
34 *first calendar quarter commencing 180 days after the effective*
35 *date of Section 30135.3, until paid, and shall be subject to*
36 *determination, and redetermination, and any penalties provided*
37 *with respect to determinations and redeterminations.*

38 *(e) The taxes imposed under Section 30135.3 and this section*
39 *shall be administered and collected by the State Board of*
40 *Equalization in accordance with this part.*

1 30135.5. To offset the effects of inflation and further reduce
2 smoking prevalence, on or before March 1 of each year, the State
3 Board of Equalization shall calculate the percentage increase in
4 the California Consumer Price Index of December of the prior
5 calendar year over December of the ~~preceding~~ *calendar year*
6 *immediately preceding the prior* calendar year. Each fiscal year,
7 the tax imposed by Section 30135.3 on cigarettes ~~and tobacco~~
8 ~~products~~ shall be reset by the State Board of Equalization to reflect
9 the California Consumer Price Index percentage increase, if any.
10 The reset tax shall be effective during the state's next fiscal year.
11 For purposes of this section, the term "California Consumer Price
12 Index" means the Consumer Price Index as determined by the
13 Department of Industrial Relations.

14 30135.6. (a) The State Board of Equalization shall determine
15 within one year of the operative date of this article, and annually
16 thereafter, the effect that the additional tax imposed on cigarettes
17 by this article, and the resulting increase in the tax on tobacco
18 products required by subdivision (b) of Section 30123, have on
19 the consumption of cigarettes and tobacco products in this state.
20 To the extent that a decrease in consumption is determined by the
21 State Board of Equalization to be a direct result of the additional
22 tax imposed by this article, or the resulting increase in the tax on
23 tobacco products required by subdivision (b) of Section 30123,
24 the State Board of Equalization shall determine the fiscal effect
25 the decrease in consumption has on the California Children and
26 Families First Trust Fund created by Proposition 10 as approved
27 by the voters at the November 4, 1998, statewide general election,
28 the Hospital Services Account, *the* Physician Services Account,
29 *the Public Resources Account*, the Unallocated Account of the
30 Cigarette and Tobacco Products Surtax Fund created by Section
31 30122 (Proposition 99 as approved by the voters at the November
32 8, 1988, statewide general election), and the Breast Cancer Fund
33 created by Section 30461.6.

34 (b) Funds shall be transferred from the Tobacco Tax and Health
35 Protection Fund to the California Children and Families First Trust
36 Fund, the Hospital Services Account, the Physician Services
37 Account, *the Public Resources Account*, the Unallocated Account
38 of the Cigarette and Tobacco Products Surtax Fund, and the Breast
39 Cancer Fund, as necessary to offset the revenue decrease directly
40 resulting from imposition of additional taxes by this article.

(c) Transfers under this section shall be made by the board at such times as the board determines necessary to further the intent of this section.

30135.7. The Tobacco Tax and Health Protection Fund Control and Lung Cancer Research Account shall, upon appropriation by the Legislature annually, be distributed as follows:

(a) ~~Sixty-five~~Forty-five percent to the State Department of Public Health Tobacco Control Program for carrying out tobacco prevention and control programs. These programs include, but are not limited to, the following:

(1) Media advertisements and public relations programs to prevent and reduce the use of tobacco products, as described in paragraph (1) of subdivision (e) of Section 104375 of the Health and Safety Code.

(2) Competitive grants directed at the prevention of tobacco-related diseases, as described in Section 104385 of the Health and Safety Code.

(3) Local health department tobacco prevention and control programs to prevent tobacco use, as described in Section 104400 of the Health and Safety Code. Notwithstanding Section 104380 of the Health and Safety Code, funds shall be appropriated to local lead agencies based on each county's proportion of the statewide population.

(4) Tobacco cessation programs and services to assist adult and minor tobacco users to quit tobacco, including, but not limited to, counseling, referral and support services, pharmaceutical tobacco cessation products, and training and technical assistance activities.

(5) Oversight and evaluation of tobacco control programs as required by subdivisions (b) and (c) of Section 104375 of the Health and Safety Code.

(b) ~~Fifteen~~Ten percent to the State Department of Education to be used solely for programs to prevent or reduce the use of tobacco products as described in Section 104420 of the Health and Safety Code. Any program receiving funds pursuant to this section must participate in program evaluations conducted by the State Department of Health Care Services pursuant to Article 1 (commencing with Section 104350) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.

(c) Ten percent to the University of California to supplement the Cigarette and Tobacco Products Surtax Medical Research

1 Program described in Article 2 (commencing with Section 104500)
2 of Chapter 1 of Part 3 of Division 103 of the Health and Safety
3 Code. The research funded by the program with these
4 supplementary funds shall include, but not be limited to:

5 (1) Research to improve the effectiveness of tobacco control
6 efforts in California, including programs and strategies for
7 governmental and other organizations to reduce tobacco use and
8 exposure to secondhand smoke.

9 (2) Research on the prevention, causes, and treatment of
10 tobacco-related diseases, including, but not limited to, coronary
11 heart disease, cerebrovascular disease, chronic obstructive lung
12 disease, and cancer.

13 (d) ~~Ten~~ Twenty percent to the University of California, for the
14 establishment and administration of a Lung Cancer Early Detection
15 and Treatment Research Program. Funds appropriated for the Lung
16 Cancer Early Detection and Treatment Research Program shall be
17 used to support research efforts related to lung cancer early
18 detection and treatment and a program for the collection,
19 assessment, and periodic publication of data pertinent to the
20 research.

21 (e) *Fifteen percent to support law enforcement efforts to reduce*
22 *cigarette smuggling, tobacco tax evasion, and counterfeit tobacco*
23 *products, to reduce illegal sales of tobacco products to minors,*
24 *and to enforce legal settlement provisions and conduct law*
25 *enforcement training and technical assistance activities for*
26 *tobacco-related statutes, which money shall be directed in the*
27 *following manner:*

28 (1) *Forty percent to the State Board of Equalization to be used*
29 *to enforce laws that regulate the distribution and retail sale of*
30 *cigarettes and other tobacco products, such as laws that prohibit*
31 *untaxed cigarette and tobacco product smuggling and*
32 *counterfeiting and sales of cigarettes and other tobacco products*
33 *without a proper license.*

34 (2) *Forty percent to the State Department of Public Health to*
35 *be used to support programs, including, but not limited to,*
36 *providing grants to local law enforcement agencies to provide*
37 *training and funding for the enforcement of state and local laws*
38 *related to the illegal sales of tobacco to minors, and increasing*
39 *investigative activities, compliance checks, and other appropriate*
40 *activities to reduce illegal sales of tobacco products to minors*

1 *under the Stop Tobacco Access to Kids Enforcement (STAKE) Act,*
2 *pursuant to Section 22952 of the Business and Professions Code.*

3 *(3) Twenty percent to the Attorney General to be used for*
4 *activities including, but not limited to, enforcing laws that regulate*
5 *the distribution and sale of cigarettes and other tobacco products,*
6 *such as laws that prohibit cigarette smuggling, counterfeiting,*
7 *selling untaxed tobacco, selling tobacco without a proper license,*
8 *and selling tobacco to minors, and enforcing tobacco-related laws,*
9 *court judgments, and settlements.*

10 30135.8. All moneys deposited in the Tobacco Tax and Health
11 Protection Fund shall be appropriated and expended only for the
12 purposes expressed in this article, and shall be used only to
13 supplement existing levels of service and not to fund existing levels
14 of service. No moneys in the fund shall be used to supplant state
15 or local General Fund money for any purpose.

16 *SEC. 5. Section 30181 of the Revenue and Taxation Code is*
17 *amended to read:*

18 30181. (a) When any tax imposed upon cigarettes under ~~Article~~
19 ~~1 (commencing with Section 30101), Article 2 (commencing with~~
20 ~~Section 30121), and Article 3 (commencing with Section 30131)~~
21 ~~of Chapter 2~~ *this part* is not paid through the use of stamps or
22 meter impressions, the tax shall be due and payable monthly on
23 or before the 25th day of the month following the calendar month
24 in which a distribution of cigarettes occurs, or in the case of a sale
25 of cigarettes on the facilities of a common carrier for which the
26 tax is imposed pursuant to Section 30104, the tax shall be due and
27 payable monthly on or before the 25th day of the month following
28 the calendar month in which a sale of cigarettes on the facilities
29 of the carrier occurs.

30 (b) Each distributor of tobacco products shall file a return in the
31 form, as prescribed by the board, which may include, but not be
32 limited to, electronic media respecting the distributions of tobacco
33 products and their wholesale cost during the preceding month, and
34 any other information as the board may require to carry out this
35 part. The return shall be filed with the board on or before the 25th
36 day of the calendar month following the close of the monthly
37 period to which it relates, together with a remittance payable to
38 the board, of the amount of tax, if any, due under Article 2
39 (commencing with Section 30121) or Article 3 (commencing with
40 Section 30131) of Chapter 2 for that period.

1 (c) To facilitate the administration of this part, the board may
2 require the filing of the returns for longer than monthly periods.

3 (d) Returns shall be authenticated in a form or pursuant to
4 methods as may be prescribed by the board.

5 ~~(e) This section shall become operative on January 1, 2007.~~

6 ~~SEC. 3.~~

7 *SEC. 6.* No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 ~~SEC. 4.~~

17 *SEC. 7.* This act provides for a tax levy within the meaning of
18 Article IV of the Constitution and shall go into immediate effect.